

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments in the Office Action mailed 19 January 2005. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks.

Amendment to the Claims

Applicants added new Claims 36-47. New Claims 36-39 depend from independent Claim 19. New Claim 40 is independent, and new Claims 41-47 depend from independent Claim 40. Support for new Claims 36-42 can be found, for example, at page 8, line 12, through page 9, line 10; page 21, line 6, through page 22, line 7; and page 24, line 20, through page 25, line 11. Support for new Claims 43-47 can be found, for example, in the previously pending claims.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains less than three and the total number of claims is less than originally filed.

Claim Rejections - 35 U.S.C. §103**Litchholt et al. in view of Van Gompel et al.**

The rejection of Claims 19-22, 24, and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Litchholt et al. (U.S. Patent 5,503,919, hereinafter "Litchholt") in view of Van Gompel et al. (EP 0 743 052, hereinafter "Van Gompel") is respectfully traversed.

Litchholt discloses an elastomeric adhesive foam in a variety of garment applications. Litchholt describes elastic side panel members 90 as operatively associated with the diaper in the ear flaps 88, preferably between the topsheet 24 and the backsheet 26. Litchholt discloses "differential stretchability" in the elasticized waistband to provide an "expansive tummy panel" that has greater lateral stretch elongation (Col. 31, lines 22-25). The waistband's ability to stretch to a greater lateral elongation allows the waistband "to differentially shape, expand, and

move with the stomach of the wearer" (Col. 31, lines 25-30). Litchholt discloses only a differential in lateral stretch lengths, and fails to disclose or suggest Applicants' high tension zones aligned along the waist and leg openings and a low tension zone therebetween.

Van Gompel discloses stretchable side members 36 that provide a stretch-gradient (Col. 5, line 42 - Col. 7, line 31). The Examiner, citing *In re Siebentritt*, 54 CCPA 1083, alleges the substitution of the side members having the stretch-gradient of Van Gompel for the stretchable ear flaps of Litchholt would have been an obvious substitution of interchangeable equivalents.

Regardless of whether or not the side members of Van Gompel and the stretchable ear flaps of Litchholt are interchangeable equivalents, the combination of Litchholt and Van Gompel neither provides Applicants' claimed invention nor suggests Applicants' claimed invention to one skilled in the art. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must disclose or suggest all the claim limitations.

Applicants' claimed invention includes a targeted elastic material in the front side panels and/or the back side panels. The targeted elastic material includes a low tension zone between two high tension zones. One of the high tension zones is aligned with a leg opening and the other high tension zone is aligned with the waist opening. As defined at page 8, last paragraph, of Applicants' Specification, the recited low tension zone is a zone or region having lower elastic tension characteristics while the high tension zones are zones or regions with higher elastic tension characteristics.

Applying the stretch-gradient of Van Gompel to Litchholt does not provide Applicants' recited high and low tension zones. The stretch gradient of Van Gompel provides increasing stretchability from the waist opening to the leg opening (Col. 5, lines 51-55; Col. 6, lines 24-31 and 44-51; Col. 7, lines 8-11). The stretch gradient can also provide an intermediate portion of the side member with greater or lesser stretchability than the end portions (Col. 7, lines 26-31). The "stretchability" refers to the amount of the stretch or elongation (not tension), and the side members of Van Gompel can stretch to different lengths at different points of the side member.

The different stretch elongations of the stretch gradient disclosed by Van Gompel are well illustrated in FIG. 1. In FIG. 1 the stretchability, i.e., the stretch elongation, of the side member 36 is illustrated by three unnumbered lines. The line toward the waist area is the shortest, representing less stretch elongation, while the line nearest the leg opening is the longest, representing greater stretch elongation. As disclosed at Column 7, lines 26-31, the middle portion of the side member can also have either less or more stretch elongation than the end portions, but Van Gompel does not disclose or suggest Applicants' high and low tension zones.

The gradient of stretch elongation disclosed by Van Gompel is different than Applicants' different tension zones. As defined by Applicants at page 8 of the Specification, "elastic tension" is the amount of force required to stretch an elastic material to a given percent elongation. Van Gompel also notes the difference between elastic tension and stretchability or elongation. Van Gompel defines tension as the force necessary to stretch a material (Col. 4, lines 37-39).

Neither Van Gompel nor Litchholt, alone or in combination, suggests incorporating zones of different elastic tension in side panels of a disposable garment. Both references disclose only benefits of differential stretch elongations. Litchholt discloses the greater stretch elongation is beneficial in the waist portion to provide an "abdominally compliant elasticized waistband, i.e., an "expansive tummy panel"." Van Gompel discloses the longer stretch elongation of the leg openings provides a garment that is easily pulled up the legs to the wearer's waist, while providing a snug fit at the waist. Neither reference discloses or suggests any benefit of zones of higher and lower elastic tension, as in Applicants' claimed invention.

For at least the reasons given above, Applicants respectfully submit that the invention of Litchholt in view of Van Gompel fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

New Independent Claim 40

Applicants assert the above remarks are equally applicable to new Claim 40. Furthermore, new Claim 40 expressly recites the low tension zone exhibits less elastic tension than the first and second high tension zones at the same stretch elongation. For example, as discussed at page 24, last paragraph of Applicants' Specification, the high tension zones have higher elastic tensions than the low tension zone at the same stretch elongation, e.g., at 50% elongation of the filaments. Van Gompel discloses that elastic tension increases as a material is increasingly stretched (Col. 5, lines 56-59), but neither discloses nor suggests providing different elastic tensions in low and high tension zones at the same elongation.

Litchholt et al. in view of Van Gompel et al. in view of Poirier

The rejection of Claim 23 under 35 U.S.C. §103(a) as being unpatentable over Litchholt and Van Gompel as applied to Claim 19 above, and further in view of Poirier (U.S. Patent 5,561,858) is respectfully traversed.

As explained above, Litchholt in view of Van Gompel fails to meet the criteria for establishing a prima facie case of obviousness. These references fail to disclose or suggest all of Applicants' claim limitations.

Poirier fails to overcome the deficiencies of Litchholt and Van Gompel. Poirier is relied upon to show obviousness of the applicability of diaper features to swimwear. Thus, Litchholt, Van Gompel, and Poirier, alone or in combination, fail to disclose or suggest the disposable garment comprising the targeted elastic material recited by Applicants.

For at least the reasons given above, Applicants respectfully submit that the invention of Litchholt and Van Gompel in further view of Poirier fails to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney

would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



Mark D. Swanson
Registration No. 48,498

Pauley Petersen & Erickson
2800 West Higgins Road, Suite 365
Hoffman Estates, Illinois 60195
(847) 490-1400
FAX (847) 490-1403